

REVISED

H.L.C.

2

AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 4571, AS REPORTED

OFFERED BY M^r. Turner (ot Texas)

Strike all after the enacting clause and insert the following:

1 SEC. 1. "THREE STRIKES AND YOU'RE OUT" FOR FRIVO-
2 LOUS PLEADINGS.

3 (a) SIGNATURE REQUIRED.—Every pleading, written
4 motion, and other paper in any action shall be signed by
5 at least 1 attorney of record in the attorney's individual
6 name, or, if the party is not represented by an attorney,
7 shall be signed by the party. Each paper shall state the
8 signer's address and telephone number, if any. An un-
9 signed paper shall be stricken unless omission of the sig-
10 nature is corrected promptly after being called to the at-
11 tention of the attorney or party.

12 (b) CERTIFICATE OF MERIT.—By presenting to the
13 court (whether by signing, filing, submitting, or later ad-
14 vocating) a pleading, written motion, or other paper, an
15 attorney or unrepresented party is certifying that to the
16 best of the person's knowledge, information and belief,
17 formed after an inquiry reasonable under the
18 circumstances—



1 (1) it is not being presented for any improper
2 purpose, such as to harass or to cause unnecessary
3 delay or needless increase in the cost of litigation;

4 (2) the claims, defenses, and other legal conten-
5 tions therein are warranted by existing law or by a
6 non frivolous argument for the extension, modifica-
7 tion, or reversal of existing law or the establishment
8 of new law; and

9 (3) the allegations and other factual contentions
10 have evidentiary support or, if specifically so identi-
11 fied, are reasonable based on a lack of information
12 or belief.

13 (c) MANDATORY SANCTIONS.—

14 (1) FIRST VIOLATION.—If, after notice and a
15 reasonable opportunity to respond, a court, upon
16 motion or upon its own initiative, determines that
17 subsection (b) has been violated, the court shall find
18 each attorney or party in violation in contempt of
19 court and shall require the payment of costs and at-
20 torneys fees. The court may also impose additional
21 appropriate sanctions, such as striking the plead-
22 ings, dismissing the suit, and sanctions plus interest,
23 upon the person in violation, or upon both such per-
24 son and such person's attorney or client (as the case
25 may be).

1 (2) SECOND VIOLATION.—If, after notice and a
2 reasonable opportunity to respond, a court, upon
3 motion or upon its own initiative, determines that
4 subsection (b) has been violated and that the attor-
5 ney or party with respect to which the determination
6 was made has committed one previous violation of
7 subsection (b) before this or any other court, the
8 court shall find each such attorney or party in con-
9 tempt of court and shall require the payment of
10 costs and attorneys fees, and require such person in
11 violation (or both such person and such person's at-
12 torney or client (as the case may be)) to pay a mon-
13 etary fine. The court may also impose additional ap-
14 propriate sanctions, such as striking the pleadings,
15 dismissing the suit and sanctions plus interest, upon
16 such person in violation, or upon both such person
17 and such person's attorney or client (as the case
18 may be).

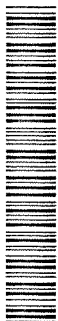
19 (3) THIRD AND SUBSEQUENT VIOLATIONS.—If,
20 after notice and a reasonable opportunity to re-
21 spond, a court, upon motion or upon its own initia-
22 tive, determines that subsection (b) has been vio-
23 lated and that the attorney or party with respect to
24 which the determination was made has committed
25 more than one previous violation of subsection (b)



1 before this or any other court, the court shall find
2 each such attorney or party in contempt of court,
3 refer each such attorney to one or more appropriate
4 State bar associations for disciplinary proceedings,
5 require the payment of costs and attorneys fees, and
6 require such person in violation (or both such person
7 and such person's attorney, or client (as the case
8 may be)) to pay a monetary fine. The court may
9 also impose additional appropriate sanctions, such as
10 striking the pleadings, dismissing the suit, and sanc-
11 tions plus interest, upon such person in violation, or
12 upon both such person and such person's attorney or
13 client (as the case may be).

14 (4) APPEAL; STAY.—An attorney has the right
15 to appeal a sanction under this subsection. While
16 such an appeal is pending, the sanction shall be
17 stayed.

18 (5) NOT APPLICABLE TO CIVIL RIGHTS
19 CLAIMS.—Notwithstanding subsection (d), this sub-
20 section does not apply to an action or claim arising
21 out of Federal, State, or local civil rights law or any
22 other Federal, State, or local law providing protec-
23 tion from discrimination.



1 (d) APPLICABILITY.—Except as provided in sub-
2 section (c)(5), this section applies to any paper filed on
3 or after the date of the enactment of this Act in—

4 (1) any action in Federal court; and

5 (2) any action in State court, if the court, upon
6 motion or upon its own initiative, determines that
7 the action affects interstate commerce.

8 **SEC. 2. "THREE STRIKES AND YOU'RE OUT" FOR FRIVO-**
9 **LOUS CONDUCT DURING DISCOVERY.**

10 (a) SIGNATURES REQUIRED ON DISCLOSURES.—

11 Every disclosure made pursuant to subdivision (a)(1) or
12 subdivision (a)(3) of Rule 26 of the Federal Rules of Civil
13 Procedure or any comparable State rule shall be signed
14 by at least one attorney of record in the attorney's indi-
15 vidual name, whose address shall be stated. An unrepre-
16 sented party shall sign the disclosure and state the party's
17 address. The signature of the attorney or party constitutes
18 a certification that to the best of the signer's knowledge,
19 information, and belief, formed after a reasonable inquiry,
20 the disclosure is complete and correct as of the time it
21 is made.

22 (b) SIGNATURES REQUIRED ON DISCOVERY.—

23 (1) IN GENERAL.—Every discovery request, re-
24 sponse, or objection made by a party represented by
25 an attorney shall be signed by at least one attorney



1 of record in the attorney's individual name, whose
2 address shall be stated. An unrepresented party
3 shall sign the request, response, or objection and
4 state the party's address. The signature of the attor-
5 ney or party constitutes a certification that to the
6 best of the signer's knowledge, information, and be-
7 lief, formed after a reasonable inquiry, the request,
8 response, or objection is:

9 (A) consistent with the applicable rules of
10 civil procedure and warranted by existing law or
11 a good faith argument for the extension, modi-
12 fication, or reversal of existing law;

13 (B) not interposed for any improper pur-
14 pose, such as to harass or to cause unnecessary
15 delay or needless increase in the cost of litiga-
16 tion; and

17 (C) not unreasonable or unduly burden-
18 some or expensive, given the needs of the case,
19 the discovery already had in the case, the
20 amount in controversy, and the importance of
21 the issues at stake in the litigation.

22 (2) STRICKEN.—If a request, response, or ob-
23 jection is not signed, it shall be stricken unless it is
24 signed promptly after the omission is called to the
25 attention of the party making the request, response,

1 or objection, and a party shall not be obligated to
2 take any action with respect to it until it is signed.

3 (c) MANDATORY SANCTIONS.—

4 (1) FIRST VIOLATION.—If without substantial
5 justification a certification is made in violation of
6 this section, the court, upon motion or upon its own
7 initiative, shall find each attorney or party in con-
8 tempt of court and shall require the payment of
9 costs and attorneys fees. The court may also impose
10 additional sanctions, such as imposing sanctions plus
11 interest or imposing a fine upon the person in viola-
12 tion, or upon such person and such person's attor-
13 ney or client (as the case may be).

14 (2) SECOND VIOLATION.—If without substantial
15 justification a certification is made in violation of
16 this section and that the attorney or party with re-
17 spect to which the determination is made has com-
18 mitted one previous violation of this section before
19 this or any other court, the court, upon motion or
20 upon its own initiative, shall find each attorney or
21 party in contempt of court and shall require the pay-
22 ment of costs and attorneys fees, and require such
23 person in violation (or both such person and such
24 person's attorney or client (as the case may be)) to
25 pay a monetary fine. The court may also impose ad-

1 ditional sanctions upon such person in violation, or
2 upon both such person and such person's attorney or
3 client (as the case may be).

4 (3) THIRD AND SUBSEQUENT VIOLATIONS.—If
5 without substantial justification a certification is
6 made in violation of this section and that the attor-
7 ney or party with respect to which the determination
8 is made has committed more than one previous vio-
9 lation of this section before this or any other court,
10 the court, upon motion or upon its own initiative,
11 shall find each attorney or party in contempt of
12 court, shall require the payment of costs and attor-
13 neys fees, require such person in violation (or both
14 such person and such person's attorney or client (as
15 the case may be)) to pay a monetary fine, and refer
16 such attorney to one or more appropriate State bar
17 associations for disciplinary proceedings. The court
18 may also impose additional sanctions upon such per-
19 son in violation, or upon both such person and such
20 person's attorney or client (as the case may be).

21 (4) APPEAL; STAY.—An attorney has the right
22 to appeal a sanction under this subsection. While
23 such an appeal is pending, the sanction shall be
24 stayed.



1 (d) APPLICABILITY.—This section applies to any
2 paper filed on or after the date of the enactment of this
3 Act in—

4 (1) any action in Federal court; and

5 (2) any action in State court, if the court, upon
6 motion or upon its own initiative, determines that
7 the action affects interstate commerce.

8 **SEC. 3. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.**

9 (a) IN GENERAL.—A court may not order that a
10 court record be sealed or subjected to a protective order,
11 or that access to that record be otherwise restricted, unless
12 the court makes a finding of fact in writing that identifies
13 the interest that justifies the order and that determines
14 that the order is no broader than necessary to protect that
15 interest.

16 (b) APPLICABILITY.—This section applies to any
17 court record, including a record obtained through dis-
18 covery, whether or not formally filed with the court.

19 **SEC. 4. ENHANCED SANCTIONS FOR DOCUMENT DESTRUC-**
20 **TION.**

21 (a) IN GENERAL.—Whoever influences, obstructs, or
22 impedes, or endeavors to influence, obstruct, or impede,
23 a pending court proceeding through the intentional de-
24 struction of documents sought in, and highly relevant to,
25 that proceeding—

1 (1) shall be punished with mandatory civil sanc-
2 tions of a degree commensurate with the civil sanc-
3 tions available under Rule 37 of the Federal Rules
4 of Civil Procedure, in addition to any other civil
5 sanctions that otherwise apply; and

6 (2) shall be held in contempt of court and, if
7 an attorney, referred to one or more appropriate
8 State bar associations for disciplinary proceedings.

9 (b) APPLICABILITY.—This section applies to any
10 court proceeding in any Federal or State court.

11 **SEC. 5. EXPEDITED DISPOSITION OF FRIVOLOUS AND**
12 **OTHER LAWSUITS.**

13 (a) IN GENERAL.—For each State, each judicial dis-
14 trict in the State shall, within 2 years of the date of the
15 enactment of this Act, develop and implement a civil jus-
16 tice expense and delay reduction plan and submit it to the
17 appropriate governing body of the State. The governing
18 body shall make the plan available to the public.

19 (b) PRINCIPLES.—Each plan required by subsection
20 (a) shall apply to actions in State court that affect inter-
21 state commerce and any other actions that the governing
22 body considers appropriate. The plan shall be developed
23 and implemented with regard to the following principles:

24 (1) Systematic, differential treatment of civil
25 cases that tailors the level of individualized and case



1 specific management to such criteria as case com-
2 plexity, the amount of time reasonably needed to
3 prepare the case for trial, and the judicial and other
4 resources required and available for the preparation
5 and disposition of the case.

6 (2) Early and ongoing control of the pretrial
7 process through involvement of a judicial officer in—

8 (A) assessing and planning the progress of
9 a case;

10 (B) setting early, firm trial dates, such
11 that the trial is scheduled to occur within eight-
12 een months after the filing of the complaint,
13 unless a judicial officer certifies that—

14 (i) the demands of the case and its
15 complexity make such a trial date incom-
16 patible with serving the ends of justice; or

17 (ii) the trial cannot reasonably be held
18 within such time because of the complexity
19 of the case or the number or complexity of
20 pending criminal cases;

21 (C) controlling the extent of discovery and
22 the time for completion of discovery, and ensur-
23 ing compliance with appropriate requested dis-
24 covery in a timely fashion; and



1 (D) setting, at the earliest practicable
2 time, deadlines for filing motions and a time
3 framework for their disposition.

4 (3) For all cases that the court or an individual
5 judicial officer determines are complex and any
6 other appropriate cases, careful and deliberate moni-
7 toring through a discovery-case management con-
8 ference or a series of such conferences at which the
9 presiding judicial officer—

10 (A) explores the parties' receptivity to, and
11 the propriety of, settlement or proceeding with
12 the litigation;

13 (B) identifies or formulates the principal
14 issues in contention and, in appropriate cases,
15 provides for the staged resolution or bifurcation
16 of issues for trial consistent with Rule 42(b) of
17 the Federal Rules of Civil Procedure;

18 (C) prepares a discovery schedule and plan
19 consistent with any presumptive time limits
20 that a district court may set for the completion
21 of discovery and with any procedures a district
22 court may develop to—

23 (i) identify and limit the volume of
24 discovery available to avoid unnecessary or



1 unduly burdensome or expensive discovery;
2 and

3 (ii) phase discovery into two or more
4 stages; and

5 (D) sets, at the earliest practicable time,
6 deadlines for filing motions and a time frame-
7 work for their disposition.

8 (4) Encouragement of cost-effective discovery
9 through voluntary exchange of information among
10 litigants and their attorneys and through the use of
11 cooperative discovery devices.

12 (5) Conservation of judicial resources by pro-
13 hibiting the consideration of discovery motions un-
14 less accompanied by a certification that the moving
15 party has made a reasonable and good faith effort
16 to reach agreement with opposing counsel on the
17 matters set forth in the motion.

18 (6) Authorization to refer appropriate cases to
19 alternative dispute resolution programs that—

20 (A) have been designated for use in a dis-
21 trict court; or

22 (B) the court may make available, includ-
23 ing mediation, minitrial, and summary jury
24 trial.



1 (c) TECHNIQUES.—In developing the plan required
2 by subsection (a), a judicial district shall consider and may
3 include the following techniques:

4 (1) A requirement that counsel for each party
5 to a case jointly present a discovery-case manage-
6 ment plan for the case at the initial pretrial con-
7 ference, or explain the reasons for their failure to do
8 so.

9 (2) A requirement that each party be rep-
10 resented at each pretrial conference by an attorney
11 who has the authority to bind that party regarding
12 all matters previously identified by the court for dis-
13 cussion at the conference and all reasonably related
14 matters.

15 (3) A requirement that all requests for exten-
16 sions of deadlines for completion of discovery or for
17 postponement of the trial be signed by the attorney
18 and the party making the request.

19 (4) A neutral evaluation program for the pres-
20 entation of the legal and factual basis of a case to
21 a neutral court representative selected by the court
22 at a nonbinding conference conducted early in the
23 litigation.

24 (5) A requirement that, upon notice by the
25 court, representatives of the parties with authority



1 to bind them in settlement discussions be present or
2 available by telephone during any settlement con-
3 ference.

4 (6) Such other features as the judicial district
5 considers appropriate.